

Subchapter 5. Procedure

for death. Since these forms are not stocked by the agencies, owcr will immediately send the supervisor the appropriate form and instructions when it receives notice of death. The supervisor should make this material available to the dependents and, as far as practical, assist in the preparation of the claim. The attending physician should complete the medical report on the reverse side of the form. The completed form should then be sent promptly to owcr.←

5-12. CASES INVOLVING LIABILITY OF A THIRD PARTY

The →owcr← has the right to be reimbursed from damages recovered in any case of injury or death caused under circumstances creating a legal liability upon someone other than the United States. No person claiming compensation should attempt to settle a third-party claim arising out of an injury or death without first obtaining advice and approval from the Solicitor of Labor (obtain from the Associate Counsel for Employees' Compensation, Washington, D.C. 20210). In all cases of this kind, the supervisor should advise claimants of these requirements.

5-13. HEARINGS

A claimant who is not satisfied with an →owcr decision may ask for a hearing before an owcr representative. The request for a hearing must be made to the Director of the owcr within 30 days after the decision. At the hearing, which will be held at a location convenient to both the claimant and the owcr, the claimant may present evidence in further support of the claim; after the hearing, owcr will issue a new decision.←

5-14. RECONSIDERATION

A claimant may ask →owcr to reconsider any determination made by one of its offices. No special form is required to request this

reconsideration but the request must be addressed to the Director of the owcr in writing and must state clearly the ground upon which it is based. It must also be accompanied by evidence not previously submitted, such as new medical reports or new statements and affidavits. There is no time limitation within which a request for reconsideration must be filed.←

5-15. APPEALS

a. A claimant may ask the Employees' Compensation Appeals Board to review final decisions by →owcr.← To file an appeal the claimant should write to the Employees' Compensation Appeals Board, United States Department of Labor, Washington, D.C. 20210; a Form AB-1 is provided for this purpose to ensure furnishing necessary information. The Board's jurisdiction extends to questions of law and fact; it may also consider exercises of discretion to determine their reasonableness. Its review is based solely upon the case record in →owcr← at the time the final determination was made; new evidence is neither received nor considered by the Board. For claimants residing within the continental United States or Canada, applications for review by the Board are to be filed within 90 days of the date of the final determination by →owcr.←. If the claimant resides outside of the continental United States or Canada, the application is to be filed within 180 days of the date of the final →owcr← determination. For good cause shown the Board may excuse failure to timely file an application for review, if it is filed within one year of the date of the final →owcr← determination.

b. The Governor of the Canal Zone administers the compensation law for employees of the Canal Zone Government and the Panama Canal Company. The right of appeal to the Board from final decisions of the Governor became effective August 30, 1964.

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Release of Information

7. Other Considerations in Releasing Information.
(Continued)

c. Investigation Reports. The release of information does not include the release of a copy of an OWCP investigation report except as described in FECA PM Part 3. CEs should ensure that the released information conforms to OWCP policies as described in 20 CFR 10 and herein. When in doubt, CEs should refer the matter to the Chief, Branch of Claims.

d. Confidential Information - FBI. Reports containing confidential information gathered by the Federal Bureau of Investigation (FBI) remain the property of the FBI and subject at all times to their control. Neither reports and communications concerning them, nor their contents, may be disclosed outside OWCP without prior approval of the FBI. Where any attempt is made to obtain access to or disclosure of such reports or communications, or should any request, subpoena, or court order be served upon any representative of OWCP, the matter should be referred to the Associate Director DFEC, Washington, D.C., or, in the Associate Director's absence, directly to the Associate Solicitor of Labor for Employee Benefits.

e. Privileged and Confidential Information. If information obtained by OWCP from other government agencies is described as privileged and confidential, such information remains the property of the other agency and cannot be released to another without the specific approval of the agency that furnished the information. A general exception to this rule concerns medical reports which may be released under the conditions described in Part 3, FECA PM.

8. Requests for Information in Third-Party Cases. All requests for information, medical or otherwise, on third-party cases should be referred to the designated claims examiner. For procedures in responding to subpoenas, see FECA PM 2-1100.

9. Unauthorized Release of Information. Except as provided in published DOL and OWCP regulations, materials in OWCP case files will not be disclosed; 5 USC 552(b)(6), provides for the exemption of "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In instances

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Primary Disability Cases

10. Hernia Cases. (Continued)

(3) This procedure may not be used in the case of a recurrent hernia after more than six months.

(4) Upon receipt of a case of this character, the CE will adjudicate the case, or obtain additional evidence if needed. A 90-day call-up for Form CA-4 or CA-7 will be scheduled when it is accepted. No other steps will be needed. The proper compensation payment should be authorized when a claim is received. Otherwise, when the call-up expires, Form CA-3 should be requested for proper disposition of the case.

11. Cases of Possible Third-Party Liability. Examiners must be alert at all times for situations where a third-party, other than another Federal employee or establishment, may be liable for the injury. This is especially true when handling primary cases, since it is best to advise the claimant as early as possible to begin attempts at a recovery before the applicable State statute of (time) limitations expires. See FECA PM 2-1100 for detailed information on notifying the claimant and handling the subrogation aspects of cases.

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Primary Death Cases

10. Third Party Cases. The CE is responsible for seeing that each original notice of death whether by telegram, telephone, or other means is brought promptly to the attention of the designated claims examiner (DCE) if there is any indication of possible third-party liability. (Handling of third-party cases has been delegated through the Assistant Deputy Commissioner (ADC) and Chief, Branch of Claims and Benefits Payments to the DCE.) The DCE should refer to FECA PM 2-1100, Subrogation, for instructions in proper handling of death cases involving possible third-party liability.

11. Obtaining Official Reports and Supporting Documentation. Upon receipt of a notice of death, the CE will send Form CA-1063 or equivalent typed letter to the official superior of the deceased employee.

a. Form CA-5 or other appropriate claim forms, and Form CA-6 must be attached to Form CA-1063 or typed letter.

b. A Claim Must Be Supported by a Death Certificate as well as other official documents, such as a marriage certificate and a birth certificate for each child, to show the legal relationship upon which the claim is based. If a prior marriage existed that could abrogate a claimant's entitlement, a death certificate, divorce decree, or other document of dissolution must be furnished to establish that such marriage was legally dissolved or had no effect. All certificates must be certified copies of public records under official seal. Unofficial photocopies or other similar reproductions of documents are not acceptable. Before the burial allowance authorized by the FECA can be paid, the claimant must furnish itemized burial bills; the bills must be receipted if they have been paid (paragraph 14 below). If the record indicates that the claimant is entitled to dual benefits from the Federal government, but is prohibited from receiving them concurrently, OWCP must obtain an election from the claimant. (See FECA PM 2-1000 for information on dual benefits.)

12. Action After Receipt of Reports. As soon as a proper claim and Form CA-6 are filed, the case must be examined to determine whether the five basic requirements for entitlement have been met: time, civil employee, personal injury, performance of duty, and causal relationship.

a. Basic Requirements. The CE should refer to FECA PM 2-400, 2-800/805 for specific information needed to make a determination as to whether these requirements have been met.

b. Disallowance. After the claim has been fully developed, if the record shows that any of the five basic requirements is not satisfied, the CE will take appropriate action to disallow the case. See FECA PM 2-1400, Disallowances.

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1. Purpose and Scope. This chapter outlines the procedures for processing third party cases under the FECA. It covers the responsibility of various DO personnel in identifying and handling cases involving third party actions as well as the interrelationship between DO personnel and personnel of the Office of the Solicitor concerning these actions, and also details the handling of cases in which a Federal Tort suit or other litigation has been filed. Consideration of third party actions arises in the claims adjudication process. Refer particularly to FECA PM 2-300.8, 2-500.20/21, 2-600.11, and 2-700.10.

2. Authority.

a. 5 USC 8131 provides that if an injury or death for which compensation is payable under the FECA is caused under circumstances creating a legal liability on a person or persons other than the United States (a third party) to pay damages, the OWCP may require the FECA beneficiary to:

(1) Assign to the United States any right of action the beneficiary may have to enforce the liability, or any right the beneficiary may have to share in money or other property received in satisfaction of the liability; or to

(2) Prosecute the action in the beneficiary's own name.

b. 5 USC 8132 outlines the requirements and procedures for adjusting any compensation benefits that have been paid, or that may be payable, after recovery from a third person.

c. 20 CFR 10.500 - 10.505 also covers cases involving the liability of a third party.

3. Responsibilities.

a. The Deputy Commissioners. With the exception of certain USPS cases (see paragraph 27 below), deputy commissioners are responsible for the processing of third party cases under 5 USC 8131 and 8132. This responsibility has been delegated, through the Assistant Deputy Commissioner and Chief of Claims, to certain claims examiners. The Deputy Commissioner shall delegate this responsibility to a minimum of two, but not more than four claims examiners. These persons are known as designated claims examiners (DCE).

b. The Designated Claims Examiners are responsible for ensuring that third party cases are processed in a timely manner and in accordance with the procedures outlined in this chapter.

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c. Each Claims Examiner (CE) is responsible for identifying any potential third party aspect during the primary examination of a case and for following the procedures outlined in 7a below.

d. The Counsel for Claims, Division of Employee Benefits, Office of the Solicitor, Department of Labor, Washington, D.C., and the Regional Offices of the Solicitor are responsible for supervising the prosecution of FECA third party damage claims in the DO.

e. Each District Office is responsible for responding to general questions concerning third party matters in accordance with procedures employed in any other aspects of FECA activities. Inquiries pertaining to a specific third party case will be referred to the DCE or to the appropriate Office of the Solicitor.

4. Letters and Forms Used in Third Party Cases.

a. Ltr. CA-1045, Notice of Third Party Rights and Obligations (Exhibit 1).

b. Ltr. CA-1121, Request for Information Concerning Third Party Aspect (Exhibit 2).

c. Ltr. CA-1108, Notice of Third Party Obligations (to attorney) (Exhibit 3).

d. Ltr. CA-1109, Authorization to Anyone to Release Information to Claimant's Attorney (Exhibit 4).

e. Form CA-161, Disbursements Made by the OWCP (Exhibit 5).

f. Form CA-162, Statement of Recovery (Exhibit 6).

g. Form CA-1123, Keep on Top of File (Exhibit 7).

h. Ltr. CA-1122, Employee's Statement of Recovery made Without an Attorney - Minor Case (Exhibit 8).

i. Ltr. CA-1111, Notice to Third Party Insurer (Exhibit 9).

j. Ltr. CA-1044, Notice of Third Party Credit (Exhibit 10).

k. Ltr. CA-1120, Notice of Closure When No Credit Was Created (Exhibit 11).

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25. Requests for Information in Cases Where Claim Has Been Filed Under the Federal Tort Claims Act. Requests for information in cases where a claim under the Federal Tort Claims Act (28 USC 2671 et seq.) has been filed should be forwarded to the Regional SOL with a report of the status of the claim. If the claim has been accepted and payments were made, a statement of disbursements, showing amounts and periods covered, and copies of all documents showing acceptance and coverage should accompany the status report. If the claim was disallowed, a copy of the compensation order should be furnished.

26. Monthly Report. Form CA-80, FECA Workload and Productivity Report, requires statistics concerning the number of third party cases identified, the number settled, and the amount of recoveries. The DCE must keep track of these statistics on a monthly basis for inclusion in the Form CA-80.

27. Certain USPS Cases.

a. General Responsibilities for the processing of third party cases under 5 USC 8131 and 8132 are outlined above in FECA PM 2-1100.3. However, to more efficiently and effectively accomplish the stated purpose of the FECA with regard to third party recoveries, the Director, OWCP, has entered into a specific written agreement with the United States Postal Service (USPS) whereby the OWCP has agreed that the USPS may, in certain cases, administratively pursue the collection of damages from the third party responsible for the injury to a postal employee. Such pursuit is limited to cases of traumatic injury, except those traumatic injury cases which fall within one or more of the following categories:

- (1) Where the traumatic injury results in the death of the employee;
- (2) where the injury occurred outside of the United States or Canada;
- (3) where the potential third party is a common carrier;
- (4) where malpractice or product liability is involved;
or
- (5) where there are multiple claims arising in more than one OWCP district office (such as group injuries, plane crashes, class actions, etc.).

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b. Procedures for Initiating Recovery. Under the OWCP/USPS third party agreement, the USPS will:

- (1) Advise each employee who files a claim under the FECA of their rights and obligations with respect to third party action;
- (2) encourage the employee to seek recovery from the third party responsible for the injury;
- (3) investigate the incident;
- (4) prepare and release correspondence (e.g., equivalents of CA-1045, CA-1108, CA-1122, etc.) to the parties involved, with copies provided to the OWCP; and
- (5) in appropriate cases will pursue the collection of damages from the responsible third party by administrative means, including obtaining the employee's full assignment to the USPS of any right of action the employee may have to enforce the liability, provided that such assignment is voluntary on the part of the employee. The USPS cannot require the employee to make such assignment, nor can it enter into litigation on behalf of the United States under 5 USC 8131.

c. Cases Outside the Scope of the OWCP/USPS Third Party Agreement will be processed by the OWCP in accordance with the procedures contained in this chapter. Upon receipt of a written request from the USPS, the designated claims examiner will promptly provide the USPS with a status report on the third party aspect of the case.

d. Responsibilities of the Claims Examiner (CE).

- (1) It is the responsibility of each CE to identify all potential third party cases during the initial primary examination of all cases, including those cases which are to be administratively pursued by the USPS.
- (2) If the case is identified as one which comes within the OWCP/USPS third party agreement, but there is no indication that the USPS has also made this identification or there is no indication that appropriate action on the third party aspect has been or will be taken by the

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employee or the USPS, the CE will release a letter to the USPS advising that it appears that the injury occurred under circumstances which may place liability for damages upon a party other than the United States and that the case appears to come within the scope of the OWCP/USPS third party agreement. The USPS should be asked to state what actions have been or will be taken by the employee and the USPS, and if no actions are contemplated the reasons therefor should be clearly stated. The case should be scheduled for call-up in 30 days, for receipt of the response.

(3) After all other needed case actions have been taken, the CE will refer the case file to a DCE.

e. Responsibilities of the Designated Claims Examiner (DCE).

(1) All third party cases will be logged by the DCE in accordance with established procedures. Those cases in which the third party aspect will be handled by the USPS will be logged with a specific notation to that effect. Other log items or entries will be completed as the information becomes available.

(2) If information is received that the third party aspect has been or will be pursued, the DCE will monitor the case on a periodic basis until the case is closed. During this period, the DCE will cooperate with the USPS and will provide any needed assistance including the prompt furnishing of a statement of disbursements (Form CA-161) when requested.

(3) If the USPS advises that no action has been or will be taken on the third party aspect of a case, the DCE will review the stated reasons therefor. If it is determined that the third party aspect should in fact be pursued, the DCE should proceed in accordance with the established procedures for initiating third party recovery action, and so notify the USPS. However, if the reasons given for not initiating action indicate that any further pursuit would be unwarranted or of little or no value, the third party aspect may be closed in accordance with established procedures.

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(4) If the employee refuses to initiate a third party suit or action and also refuses to assign the right of action to the USPS, the USPS will forward to the DCE all pertinent information not previously provided. After reviewing the file, the DCE may close the third party aspect of the case if the case is "minor" or refer it to the SOL if indicated.

f. Settlements.

(1) If, while the third party aspect is being handled by the USPS, information is received that a settlement is imminent and will result in a third party credit, the DCE will suspend any periodic roll payments and will furnish the USPS with a final disbursement statement.

(2) After settlement has been made, the USPS will furnish the DCE with a completed recovery statement (Form CA-162) and a check representing the refund of OWCP disbursements. Any COP recovered will be retained by the USPS. Following receipt, the DCE will finalize the process in accordance with established procedures including the release of Ltr. CA-1044 or Ltr. CA-1120, as appropriate.

g. Releases. Any request for a release will be forwarded to the SOL. Since the SOL will not have a file on the case, the SOL should also be provided with all pertinent information (name of the employee, date of injury, name and address of the third party or the third party's insurance carrier, a statement of total disbursements and a copy of the recovery statement) so that the release can be properly prepared.